

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TERRY LAMELL EZELL,

Plaintiff,

v.

SHAWNA McCANN,

Defendant.

CASE NO. 23-1882-JCC-SKV

ORDER DECLINING TO SERVE  
COMPLAINT AND GRANTING LEAVE  
TO AMEND

Plaintiff Terry Ezell is a federal prisoner who is currently confined at the Federal Correctional Institution in Sheridan, Oregon. He has submitted to the Court for filing a civil complaint against a federal defendant which the Court construes as a complaint filed pursuant to *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971). Dkt. # 5-1. Plaintiff asserts in his complaint that Defendant Shawna McCann, a Special Agent with the Federal Bureau of Investigation, obtained a search warrant by incorporating false and misleading statements into a search warrant affidavit which led to the unlawful search of two residences Plaintiff was associated with. *See id.* at 4, 7. Plaintiff claims that he spent a year in custody at the Federal Detention Center in SeaTac, Washington, before charges stemming from the alleged

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1 unlawful search were dismissed. *Id.* at 5. Plaintiff alleges violations of his constitutional rights  
2 and claims of false arrest and malicious prosecution arising out of the alleged unlawful search.  
3 *See id.* at 7-10.

4 Rule 8(a) of the Federal Rules of Civil Procedure provides that in order for a pleading to  
5 state a claim for relief it must contain a short and plain statement of the grounds for the court's  
6 jurisdiction, a short and plain statement of the claim showing that the pleader is entitled to relief,  
7 and a demand for the relief sought. The statement of the claim must be sufficient to "give the  
8 defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests."  
9 *Conley v. Gibson*, 355 U.S. 41, 47 (1957). The factual allegations of a complaint must be  
10 "enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*,  
11 550 U.S. 544, 555 (2007). In addition, a complaint must allege facts to state a claim for relief  
12 that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

13 In order to sustain a cause of action under *Bivens*, a plaintiff must satisfy the  
14 requirements of an action pursuant to §1983, except for the substitution of a federal actor in  
15 place of a state actor. *Van Strum v. Lawn*, 940 F.2d 406, 409 (9th Cir. 1991). Accordingly, a  
16 plaintiff must show that (1) he suffered a violation of rights protected by the Constitution or  
17 created by federal statute, and (2) the violation was proximately caused by a person acting under  
18 color of federal law. *See Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). To satisfy  
19 the second prong, a plaintiff must allege facts showing how individually named defendants  
20 caused or personally participated in causing the harm alleged in the complaint. *See Arnold v.*  
21 *IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).

1 Plaintiff's pleading fails to satisfy these standards. While Plaintiff repeatedly describes  
2 in his complaint Special Agent McCann's alleged unlawful conduct in relation to the search  
3 warrant, his pleading lacks details necessary for the Court to determine whether this action  
4 should proceed. In particular, Plaintiff fails to identify in his pleading dates relevant to the  
5 claims alleged, including the date the alleged unlawful warrant was issued and executed, the date  
6 he was arrested in relation to the warrant, and the date the charges stemming from the warrant  
7 were dismissed. Plaintiff also fails to identify the specific charges that were filed against him  
8 and subsequently dismissed, and the criminal case number under which those charges were filed.  
9 This information is necessary for the Court to assess whether the claims asserted by Plaintiff are  
10 timely, and whether they are cognizable at this juncture.

11 Based on the foregoing, the Court ORDERS as follows:

12 (1) The Court declines to direct that Plaintiff's complaint be served on Defendants  
13 because of the deficiencies identified above. However, Plaintiff is granted leave to file an  
14 amended complaint curing the noted deficiencies within ***thirty (30) days*** of the date on which  
15 this Order is signed. Plaintiff must ensure that the amended complaint carries the same case  
16 number as his original complaint. If no amended complaint is timely filed, or if Plaintiff fails to  
17 correct the deficiencies identified above, the Court will recommend that this action be dismissed  
18 pursuant to 28 U.S.C. § 1915(e)(2)(B).

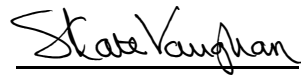
19 Plaintiff is advised that an amended pleading operates as a *complete* substitute for an  
20 original pleading. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992) (citing *Hal Roach*  
21 *Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1990) (as amended)).  
22 Thus, any amended complaint must clearly identify each Defendant, the constitutional claim(s)  
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1 asserted, the specific facts which Plaintiff believes support each claim, and the specific relief  
2 requested.

3 (2) The Clerk is directed to send Plaintiff the appropriate forms so that he may file an  
4 amended complaint. The Clerk is further directed to send copies of this Order to Plaintiff and to  
5 the Honorable John C. Coughenour.

6 DATED this 4th day of January, 2024.

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9 S. KATE VAUGHAN  
United States Magistrate Judge